Transitioned retail access charges are a necessary check on the potential inability of marketplace forces to drive interstate access prices to competitive levels. To the extent access charges remain at supra-competitive levels, they are a continuing source of cross-subsidy for ILEC competitive ventures, including video services. Since the market-based approach cannot be relied upon to eliminate the monopoly revenue base as a source of cross-subsidy, we oppose its adoption in place of transitioned reductions in access charges.

V. DESPITE THE INABILITY OF THE MARKET-BASED APPROACH TO DRIVE ACCESS PRICES TO COST, AS A COMPETITIVE CHECK ON ILECS THE COMMISSION SHOULD CONDITION ILEC PRICING FLEXIBILITY UPON COMPLIANCE WITH THE MARKET-BASED CONDITIONS*

The inability of the market-based approach to bring prices in line with costs does not mean the approach are not a potentially important regulatory tool. As pointed out above, the Phase 1 procedures are a virtual mirror-image of requirements imposed upon ILECs and in particular upon BOCs, in the wholesale context as part of the Telecommunications Act's plan to open local telephone markets to competition.

Compliance with these procedures does not warrant a Commission declaration that a service is potentially competitive or the conclusion that in conjunction with Phase 2 the approach can substitute for regulations imposed access charge rate reductions. But the market-based scheme can furnish an important competitive check. ILECs are likely to seek pricing flexibility on the grounds they face competition. Independent of, and in addition to, the requirement for rate reductions, the Commission should adopt the Phase 1 "competitive triggers" as a

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* Responsive to Section V.

precondition, along with a demonstration of "actual competition,"[50] to pricing flexibility. The Commission should be prepared, moreover, to rescind pricing flexibility if an ILEC "backslides" in its compliance with the Phase 1 conditions.

The Commission must provide assurance that competitors who rely upon the statute's market-opening procedures are not denied these procedures once an ILEC obtains pricing flexibility. By making the continuing availability of pricing flexibility contingent upon ongoing compliance with the Phase 1 conditions, the Commission can diminish the prospects that ILECs will use their bottleneck power to inhibit competition.

Therefore, ILECs should not be permitted to engage in pricing flexibility as proposed in the NPRM, unless prescribed access charge reductions are in place, and:

- unbundled network elements are offered based on forward-looking costs in a manner than reflects the way costs are incurred;
- transport and termination charges are based on the additional cost of transporting and terminating another carrier's traffic.
- wholesale prices for retail services are based on reasonably avoidable costs.
- network elements and services are capable of being provisioned rapidly and consistent with a significant level of demand.
- dialing parity is provided by the incumbent LEC to competitors.
- number portability is provided by the incumbent LEC to competitors.
- access to the incumbent LEC's poles, ducts, conduits and rights-of-way are provided by the incumbent LEC to competing providers on rates, terms and conditions that are consistent with Section 224.
- open and nondiscriminatory network standards and protocols are put into effect.

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50 The demonstration of "actual competition" should include "market share as one factor." Access Charge Reform at ¶203.

Conditioning the components of pricing flexibility upon compliance with these requirements, and provision for their enforcement as an ongoing condition of an ILEC's continuing ability to engage in pricing flexibility, is a necessary part of competition-fostering rules and policies.

VI. RATE STRUCTURES SHOULD BE REVISED TO PROPERLY REFLECT COSTS*

The Commission observes--and no one can dispute--the current access charge rate structure is at odds with the manner in which costs are incurred.[51] For reasons of policy that may have had legitimacy in a monopoly environment, the prices of certain flat-rated elements varies with usage. Other elements whose costs do vary with usage are priced on a flat-rated basis. The Commission seeks comment on revisions to Part 69 to align traffic sensitive elements with a usage-based cost structure, while requiring the pricing of non-traffic sensitive elements on a flat-rated basis. The Commission also proposes to phase out the Transport Interconnection Charge ("TIC") in a manner responsive to the D.C. Circuit's remand and that fosters competition.[52]

The Commission correctly concludes several provisions of the access charge rules "compel incumbent LECs to impose charges for access services in a manner that does not accurately reflect the way those LECs incur the costs of providing those services."[53] The NPRM points out, for example, that loop costs do not vary with usage, but the carrier common line ("CCL") charge which recovers a portion of loop costs is priced on a per minute basis. It notes

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* Responsive to Section VI.

51 Id. at ¶55.

52 Competitive Telecommunications Association v. FCC, 87 F. 3d 522 (D.C. Cir. 1996).

53 Access Charge Reform at ¶55.

certain switching costs are non-traffic sensitive ("NTS"), although all of these costs are also recovered based on usage.[54] The Transport Interconnection Charge ("TIC") is acknowledged to overcompensate LECs for use of interstate transport facilities, and this charge must also be revised. These and other modifications to the Part 69 rate structure are needed because existing mechanisms could "skew or limit the development of competition"[55] and "may not be sustainable in the long run if unbundled network elements are made available at cost-based prices and used to provide exchange access services."[56]

The Commission should proceed, therefore, with its proposal to transition pricing of interstate access elements to reflect costs and to adjust rate structures to reflect the necessary changes. With respect to the carrier common line charge, we agree with the conclusion of the Joint Board that recovery of loop costs on a traffic-sensitive basis is "an inefficient cost recovery mechanism."[57] Permitting LECs to recover the carrier common line charge by imposing a flat-rated charge on IXCs, as suggested by the Joint Board, appears reasonable, as does the proposal to assess the charge directly upon those end users who choose not to select an interexchange carrier.

Local switching costs have been priced on a usage-sensitive basis. The Commission proposes to reevaluate the components of local switching to determine those components that are

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54 Id.

55 Id.

56 Id.

57 Access Charge Reform at ¶59.

traffic sensitive and those that impose no usage-based costs on the network. Following this evaluation, access charges should be restructured to properly reflect cost causation. On similar grounds, if SS7 costs are shown to be recovered in a manner not reflective of cost causation, the rate structure associated with the recovery of these costs should be revised also.

The Commission should, in addition, proceed with its reevaluation of the transport rate structure. There is no justification for including non-cost based costs as part of the charge for transport. Moreover, the transport rate structure is in particular need of swift revision because within it is contained the Transport Interconnection Charge. The United States Court of Appeals, last year, could find no cost justification for policy-driven charge. It directed the Commission to justify the charge or eliminate it.[58]

The Commission intends "to establish a mechanism to phase out the TIC in a manner that fosters competition and responds to the court's respond."[59] The court's remand alone cannot be read, however, to justify any phase-out. Its removal would have been necessary irrespective of the 1996 Act. It should be promptly eliminated.

VII. THE COMMISSION SHOULD TAKE ADDITIONAL STEPS SO THAT RATES REFLECT COSTS

The Commission, in addition to resolving the basic challenges of removing universal service-related costs from interstate access and recovering these charges in the Universal Service Fund, and revising rate levels and ate structures, must take additional steps to move prices to costs. Toward that end, NCTA urges the Commission to:

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58 Competitive Telecommunications Association v. FCC, 87 F.3d 522, at 536 (D.C. Cir. 1996).

59 Access Charge Reform at ¶98.

- to adjust access rates downward to reflect the excessive recovery of equal access network reconfiguration costs;
- to continue to allocate costs between regulate and non-regulated services;
- to remove excessive spare capacity from the determination of interstate access charges; and
- to decline to regulate terminating access when offered by CLECs.

These actions will move local telecommunications in the direction of achieving the Act's pro-competitive goals.

A. Access Charges Should Be Reduced to Reflect the Prior Completion of Equal Access Network Reconfiguration*

The Commission explains that since the mid-1980's it has permitted ILECs to recover costs associated with the reconfiguration of the telephone network that makes equal access available to interexchange carriers and their customers. LECs were directed to amortize these costs over an eight year period ending December 31, 1993.

When LEC price caps were initially set in 1990, they included an equal access network reconfiguration charge. Even though the amortization period ended more than three years ago, price caps have never been adjusted downward to account for the full recovery of the costs of network reconfiguration. The Commission proposes an exogenous adjustment to price caps to take account of the completion of this amortization period. The proposed adjustment is long overdue and should be adopted.

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* Responsive to Section VIII.C.1.

B. The Commission Should Continue to Require ILECs to Allocate Costs Between Regulated and Non-Regulated Services*

The Commission asks whether it is appropriate, under either the market-based approach or prescription, to eliminate regulations designed to protect against interservice subsidy of regulated services. NCTA believes this proposal is highly premature, because ILECs will continue to exercise market power over exchange access and local service indefinitely. The FCC must be prepared to limit the use of interservice cross-subsidy as an anticompetitive device.

It is also vital that the Commission adopt regulatory procedures to protect against video-telephone cost misallocations and resulting cross-subsidies. The Commission has had an outstanding proceeding to address this issue for some time. [60]The Commission should promptly complete this proceeding.

C. Spare Capacity Deployed for the Purpose of Offering Unregulated Services Should Be Excluded From the Basis for Recalculated Price Caps*

Related to the issue of video-telephone cost misallocation is the issue of excessive spare capacity. The Commission previously posited that local telephone companies have made excessive investments in plant over and above capacity that might be used to deliver regulated services.[61] There is the suggestion these investments were made so telephone networks could deliver video and other non-regulated services.

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* Responsive to Section VI.C.

60 Allocation of Costs (etc.) Allocation of Costs Associated with Local Exchange Carrier Provision of Video Programming Services, FCC 96-214, rel. May 10, 1996.

* Responsive to Section VI.C.

61 Id.

As part of the process of reinitializing price caps, the Commission should determine the amount of excess investment not deployed for telephone-related purposes. This amount should be subtracted from the basis for determining interstate access rates. Only then can the Commission establish new rates that satisfy the "just and reasonable" standard.

D. The Commission Should Not Regulate CLEC-Provided Terminating Access*

The Commission suggests CLECs have market power in access termination, contending "Because the paying parties do not choose the carrier that terminates their interstate calls, competitive LECs potentially could charge excessive prices for terminating access."[62] It asks whether terminating access provided by a CLEC should be regulated.

The regulation of CLEC-provided terminating access at this earliest stage of competition is a solution in search of a problem. The theoretical ground for anticipating CLEC's would be able to charge, and would in fact charge excessively for termination, has not been demonstrated in the marketplace. It is likely that competitive forces faced by CLECs will constrain any such behavior. No regulatory action is warranted until it is demonstrated that CLECs are improperly exercising market power.

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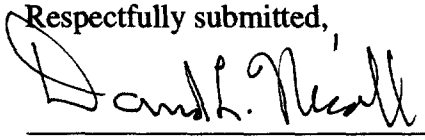
* Responsive to Section VIII.A.

62 Access Charge Reform at ¶279 (citation omitted).

VIII. CONCLUSION

For the foregoing reasons, the Commission should adopt positions consistent with the comments set forth herein.

Respectfully submitted,



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